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SENATE BILL 5938

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State of Washington

58th Legislature

2003 Regular Session

By Senators Finkbeiner and Esser

Read first time 02/21/2003. Referred to Committee on Highways & Transportation.

1 AN ACT Relating to financial responsibility requirements for  
2 vessels; amending RCW 88.40.011, 88.40.020, and 88.40.040; and creating  
3 a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that the current  
6 financial responsibility laws for vessels are in need of update and  
7 revision. The legislature intends that, whenever possible, the  
8 standards set for Washington state provide the highest level of  
9 protection consistent with other western states and to ultimately  
10 achieve a more uniform system of financial responsibility on the  
11 Pacific Coast.

12 **Sec. 2.** RCW 88.40.011 and 2000 c 69 s 30 are each amended to read  
13 as follows:

14 (~~Unless the context clearly requires otherwise,~~) The definitions  
15 in this section apply throughout this chapter unless the context  
16 clearly requires otherwise.

17 (1) "Cargo vessel" means a self-propelled ship in commerce, other  
18 than a tank vessel, fishing vessel, or a passenger vessel, of three

1 hundred or more gross tons(~~(, including but not limited to, commercial~~  
2 ~~fish processing vessels and freighters)~~). Gross tons means United  
3 States tons as determined by the United States coast guard for United  
4 States flag vessels and international tonnage convention for non-United  
5 States vessels.

6 (2) "Bulk" means material that is stored or transported in a loose,  
7 unpackaged liquid, powder, or granular form capable of being conveyed  
8 by a pipe, bucket, chute, or belt system.

9 (3) "Covered vessel" means a tank vessel, cargo vessel, or  
10 passenger vessel with a fuel capacity over two hundred fifty barrels.

11 (4) "Department" means the department of ecology.

12 (5) "Director" means the director of the department of ecology.

13 (6)(a) "Facility" means any structure, group of structures,  
14 equipment, pipeline, or device, other than a vessel, located on or near  
15 the navigable waters of the state that: (i) Transfers oil in bulk to  
16 or from a ((tank)) (A) covered vessel; (B) fishing vessel; (C) tug; or  
17 (D) pipeline((, that)); or (ii) is used for producing, storing,  
18 handling, transferring, processing, or transporting oil in bulk.

19 (b) A facility does not include any: (i) Railroad car, motor  
20 vehicle, or other rolling stock while transporting oil over the  
21 highways or rail lines of this state; (ii) retail motor vehicle motor  
22 fuel outlet; (iii) facility that is operated as part of an exempt  
23 agricultural activity as provided in RCW 82.04.330; (iv) underground  
24 storage tank regulated by the department or a local government under  
25 chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense  
26 more than three thousand gallons of fuel to a ship that is not a  
27 covered vessel, in a single transaction.

28 (7) "Fishing vessel" means a self-propelled commercial vessel of  
29 three hundred or more gross tons that is used for catching or  
30 processing fish. Gross tons means United States tons as determined by  
31 the United States coast guard for United States flag vessels and  
32 international tonnage convention for non-United States vessels.

33 (8) "Hazardous substances" means any substance listed as of March  
34 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted (~~(August 14,~~  
35 ~~1989,~~) under section 101(14) of the federal comprehensive  
36 environmental response, compensation, and liability act of 1980, as  
37 amended by P.L. 99-499. The following are not hazardous substances for  
38 purposes of this chapter:

1 (a) Wastes listed as F001 through F028 in Table 302.4; and

2 (b) Wastes listed as K001 through K136 in Table 302.4.

3 ~~((8) "Inland barge" means any barge operating on the waters of the~~  
4 ~~state and certified by the coast guard as an inland barge.))~~

5 (9) "Navigable waters of the state" means those waters of the  
6 state, and their adjoining shorelines, that are subject to the ebb and  
7 flow of the tide and/or are presently used, have been used in the past,  
8 or may be susceptible for use to transport intrastate, interstate, or  
9 foreign commerce.

10 (10) "Oil" or "oils" means any naturally occurring liquid  
11 hydrocarbons at atmospheric temperature and pressure coming from the  
12 earth, including condensate and natural gasoline, and any fractionation  
13 thereof, including, but not limited to, crude oil, petroleum, gasoline,  
14 fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes  
15 other than dredged spoil. Oil does not include any substance listed as  
16 of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted (~~August~~  
17 ~~14, 1989,~~) under section 101(14) of the federal comprehensive  
18 environmental response, compensation, and liability act of 1980, as  
19 amended by P.L. 99-499.

20 (11) "Offshore facility" means any facility located in, on, or  
21 under any of the navigable waters of the state, but does not include a  
22 facility any part of which is located in, on, or under any land of the  
23 state, other than submerged land.

24 (12) "Onshore facility" means any facility any part of which is  
25 located in, on, or under any land of the state, other than submerged  
26 land, that because of its location, could reasonably be expected to  
27 cause substantial harm to the environment by discharging oil into or on  
28 the navigable waters of the state or the adjoining shorelines.

29 (13)(a) "Owner or operator" means (i) in the case of a vessel, any  
30 person owning, operating, or chartering by demise, the vessel; (ii) in  
31 the case of an onshore or offshore facility, any person owning or  
32 operating the facility; and (iii) in the case of an abandoned vessel or  
33 onshore or offshore facility, the person who owned or operated the  
34 vessel or facility immediately before its abandonment.

35 (b) "Operator" does not include any person who owns the land  
36 underlying a facility if the person is not involved in the operations  
37 of the facility.

1 (14) "Passenger vessel" means a ship of three hundred or more gross  
2 tons with a fuel capacity of at least six thousand gallons carrying  
3 passengers for compensation. Gross tons means United States tons as  
4 determined by the United States coast guard for United States flag  
5 vessels and international tonnage convention for non-United States  
6 vessels.

7 (15) "Ship" means any boat, ship, vessel, barge, or other floating  
8 craft of any kind.

9 (16) "Spill" means an unauthorized discharge of oil into the waters  
10 of the state.

11 (17) "Tank vessel" means a ship that is constructed or adapted to  
12 carry, or that carries, oil in bulk as cargo or cargo residue, and  
13 that:

14 (a) Operates on the waters of the state; or

15 (b) Transfers oil in a port or place subject to the jurisdiction of  
16 this state.

17 (18) "Waters of the state" includes lakes, rivers, ponds, streams,  
18 inland waters, underground water, salt waters, estuaries, tidal flats,  
19 beaches and lands adjoining the seacoast of the state, sewers, and all  
20 other surface waters and watercourses within the jurisdiction of the  
21 state of Washington.

22 **Sec. 3.** RCW 88.40.020 and 2000 c 69 s 31 are each amended to read  
23 as follows:

24 (1) Any (~~inland~~) barge that transports hazardous substances in  
25 bulk as cargo, using any port or place in the state of Washington or  
26 the navigable waters of the state shall establish evidence of financial  
27 responsibility in the amount of the greater of (~~one~~) five million  
28 dollars, or (~~one~~) three hundred (~~fifty~~) dollars per gross ton of  
29 such vessel.

30 (2)(a) Except as provided in (b) or (c) of this subsection or  
31 subsection (6) of this section, a tank vessel that carries oil as cargo  
32 in bulk shall demonstrate financial responsibility to pay at least five  
33 hundred million dollars. The amount of financial responsibility  
34 required under this subsection is one billion dollars after January 1,  
35 2004.

36 (b) The director by rule may establish a lesser standard of  
37 financial responsibility for (~~barges~~) tank vessels of three hundred

1 gross tons or less. The standard shall set the level of financial  
2 responsibility based on the quantity of cargo the (~~barge~~) tank vessel  
3 is capable of carrying. The director shall not set the standard for  
4 (~~barges~~) tank vessels of three hundred gross tons or less below that  
5 required under federal law.

6 (c) The owner or operator of a tank vessel who is a member of an  
7 international protection and indemnity mutual organization and is  
8 covered for oil pollution risks up to the amounts required under this  
9 section is not required to demonstrate financial responsibility under  
10 this chapter. The director (~~may~~) shall require the owner or operator  
11 of a tank vessel to prove membership in such an organization.

12 (3) A cargo vessel or passenger vessel that carries more than six  
13 thousand five hundred barrels of oil as fuel shall demonstrate  
14 financial responsibility to pay (~~the greater of at least six hundred~~  
15 ~~dollars per gross ton or five hundred thousand~~), except as provided in  
16 subsection (6) of this section, at least three hundred million dollars.

17 (4) A fishing vessel while on the navigable waters of the state  
18 must demonstrate financial responsibility in the following amounts:

19 (a) For a nontank vessel carrying predominantly nonpersistent product,  
20 one hundred thirty-three dollars and forty cents per incident, for each  
21 barrel of total oil storage capacity, persistent and nonpersistent  
22 product, on the vessel or one million three hundred thirty-four  
23 thousand dollars, whichever is greater; or (b) for a nontank vessel  
24 carrying predominantly persistent product, four hundred dollars and  
25 twenty cents per incident, for each barrel of total oil storage  
26 capacity, persistent product and nonpersistent product, on the vessel  
27 or six million six hundred seventy thousand dollars, whichever is  
28 greater.

29 (5) The documentation of financial responsibility shall demonstrate  
30 the ability of the document holder to meet state and federal financial  
31 liability requirements for the actual costs for removal of oil or  
32 hazardous substance spills, for natural resource damages, for civil  
33 penalties and fines imposed, for removal of shipwrecks and ship debris  
34 from the lands and waters of the state, and for necessary expenses  
35 related to a spill, or substantial threat of a spill, involving oil or  
36 a hazardous substance.

37 (~~(+5)~~) (6) The department may by rule set a lesser amount of  
38 financial responsibility for a tank vessel that meets standards for

1 construction, propulsion, equipment, and personnel established by the  
2 department. The department shall require as a minimum level of  
3 financial responsibility under this subsection the same level of  
4 financial responsibility required under federal law.

5 ((+6+)) (7) This section shall not apply to a covered vessel owned  
6 or operated by the federal government or by a state or local  
7 government.

8 **Sec. 4.** RCW 88.40.040 and 2000 c 69 s 33 are each amended to read  
9 as follows:

10 (1) (~~The department shall deny entry to the waters of the state to~~  
11 ~~any vessel that does not meet the financial responsibility requirements~~  
12 ~~of this chapter~~) It is unlawful for any vessel required to have  
13 financial responsibility under this chapter to enter or operate on  
14 Washington waters without meeting the requirements of this chapter or  
15 rules adopted under this chapter, except when necessary to avoid injury  
16 to the vessel's crew or passengers. Any vessel owner or operator that  
17 does not meet the financial responsibility requirements of this chapter  
18 and any rules prescribed thereunder or the federal oil pollution act of  
19 1990 shall be reported by the department to the United States coast  
20 guard.

21 (2) The department shall enforce section 1016 of the federal oil  
22 pollution act of 1990 as authorized by section 1019 of the federal act.

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